

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

December 11, 2001

IN RE:

PETITION OF CHATTANOOGA GAS COMPANY
FOR APPROVAL OF AN EXPERIMENTAL FIXED
RATE TARIFF

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)
) DOCKET NO.
) 01-00761
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)

**ORDER CONVENING A CONTESTED CASE PROCEEDING, GRANTING
INTERVENTION TO THE CONSUMER ADVOCATE
AND PROTECTION DIVISION AND TO DYNEGY, INC., APPROVING PETITION TO
PLEAD AND PRACTICE *PRO HAC VICE*, APPOINTING PRE-HEARING OFFICER, AND
SUSPENDING TARIFF FOR FORTY-FIVE DAYS**

On August 31, 2001, Chattanooga Gas Company ("Chattanooga") filed a *Petition for Approval of a Tariff Establishing Fixed Rate PGA Rider* ("Chattanooga's Petition"). This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on September 25, 2001 upon the *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter (the "Consumer Advocate") and the *Petition to Intervene* filed by Dynegy, Inc. ("Dynegy").

Chattanooga's Petition

In its *Petition*, Chattanooga requests Authority approval of a tariff establishing an experimental three (3) year period during which, rather than pass through its actual costs of supplying gas to its customers, Chattanooga proposes to freeze its customers' rates for three (3) successive twelve (12) month periods. For this purpose, Chattanooga proposes to enter into a contract with its gas trading affiliate, Sequent Energy Management, L.P. ("Sequent"), for a twelve (12) month supply of gas at a fixed rate for each of the successive twelve (12) month periods. As

stated in *Chattanooga's Petition*, the proposed tariff will involve a waiver of the Authority Purchased Gas Adjustment Rules.¹ Chattanooga explains that the proposed fixed rate tariff ("FRT") is a response to "the financial hardships faced by residential and small commercial customers due to the volatility in natural gas wholesale prices during the past winter heating season."² Chattanooga explains that it will "assume certain risks as a result of entering into a long term contract."³ Chattanooga further states that "to compensate for such risks, the FRT includes a 'risk premium.'"⁴

The Consumer Advocate filed its *Petition to Intervene* on September 14, 2001. As a basis for its request to intervene in this matter, the Consumer Advocate states as follows:

2. In the present docket, CGC seeks approval by the Tennessee Regulatory Authority ("TRA") of the FRT and in conjunction the ability to charge an insurance premium of approximately twenty (20) percent in return for a fixed price that consumers will be charged for twelve (12) month periods over a three (3) year term.

3. The FRT represents a substantial departure from the traditional rate mechanism wherein consumers are only asked to pay rates based upon the actual cost of CGC.

4. The FRT over time will result in higher gas cost to consumers than the actual costs borne by CGC.

5. All of the savings under this proposal relative to the excess of the fixed rate over actual gas costs will be kept by Sequent Energy Management, the gas purchasing affiliate of CGC.

6. The Attorney General believes that the FRT is not in the best interest of ratepayers and therefore, CGC should continue the past practice of setting rates based upon its actual costs effectively passing any savings through to the ratepayer.⁵

On September 24, 2001, Dynegy filed its *Petition to Intervene*. Dynegy states that it is "one of the leading energy merchants in the United States" and that it "markets natural gas, natural gas liquids and electricity to customers throughout the U.S., including customers in Tennessee and other nearby states."⁶ Dynegy further states that it has "substantial and vital interests in the outcome of

¹ Tennessee Regulatory Authority Rules Chapter 1220-4-7.

² *Chattanooga's Petition*, August 31, 2001, p. 3.

³ *Id.*, p. 4.

⁴ *Id.*, p. 5.

⁵ *Attorney General's Petition to Intervene*, September 14, 2001, pp. 1-2.

⁶ *Petition to Intervene of Dynegy Inc.*, September 24, 2001, p. 1.

the Authority's action in this docket and desires to intervene in order to protect those interests."⁷ Dynegy states that it is a potential competitor of Sequent, Chattanooga's affiliate which will provide gas to Chattanooga as part of its proposed Fixed Rate PGA Rider.

Dynegy raises specific concerns about Chattanooga's proposal. For example, Dynegy states that it "has concerns about whether Chattanooga's proposed 'Risk Premium' component reflects the proper balance between revenues the risk premium will produce for Chattanooga and Sequent and the risks that are being assumed by the affiliated companies."⁸

With its *Petition to Intervene*, Dynegy filed a *Petition for Admission to Plead and Practice Pro Hac Vice* for its attorney, Robert J. Middleton, Jr., who avers that he is a member in good standing of the Georgia Bar.

Consideration of this Matter at the September 25, 2001 Authority Conference

This matter came before the Directors of the Authority at the September 25, 2001 Authority Conference. Counsel for Chattanooga stated that Chattanooga did not oppose the Consumer Advocate's *Petition to Intervene* but did oppose Dynegy's *Petition to Intervene*.⁹ Counsel stated that Chattanooga had filed a response to Dynegy's Petition that morning, having only received notice of Dynegy's *Petition to Intervene* on September 24, 2001.¹⁰ Counsel further stated that Chattanooga does not believe that Dynegy has an interest in this proceeding and that Dynegy is not a customer of Chattanooga, nor does Dynegy do business with Chattanooga or serve in the State of Tennessee.¹¹

Counsel for Chattanooga further stated that one motivation for Dynegy's request to intervene

⁷ *Id.*

⁸ *Id.*, p. 4.

⁹ Transcript of Authority Conference, September 25, 2001, p. 35.

¹⁰ *Response in Opposition to the Petition for Intervention of Dynegy, Inc.*, September 25, 2001. Chattanooga's *Response* states that "the only interest cited by Dynegy is a business interest, not a legal interest" and that "[i]t would be unjust to Chattanooga Gas and its rate payers to thwart Chattanooga Gas' efforts to have this experimental tariff considered in a time frame where, if approved, it would have the greatest benefit for rate payers." *Id.*, p. 2.

¹¹ Transcript of Authority Conference, September 25, 2001, p. 36.

may be retaliation for an unrelated lawsuit filed by an affiliate of Chattanooga.¹² When asked whether intervention by Dynegy would not have the potential of bringing information to the Authority's attention that would otherwise have remained unavailable, counsel for Chattanooga stated that such information could be sought by the Consumer Advocate. Counsel stated that none of the legal interests, rights, or immunities of Dynegy were affected in this docket.¹³ When asked whether Dynegy might not show that better prices than those proposed by Chattanooga were available, counsel for Chattanooga stated that the Consumer Advocate could obtain such information.¹⁴ Director Malone noted that Chattanooga's response to Dynegy's *Petition to Intervene* was filed after the starting time of the Authority Conference, allowing insufficient time for consideration by the Directors.¹⁵

Following these comments, the Directors first voted unanimously to convene a contested case proceeding in this matter. Applying the legal standards for intervention, codified at Tenn. Code Ann. § 4-5-310, the Directors found that the Consumer Advocate's *Petition to Intervene* and Dynegy's *Petition to Intervene* were filed within the proper time period, substantiated that legal interests of the intervenors may be determined in this matter, and demonstrated that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by allowing such intervention.

The Directors then voted unanimously to grant the Consumer Advocate's *Petition to Intervene* and Dynegy's *Petition to Intervene*, to approve Dynegy's *Petition for Admission to Plead and Practice Pro Hac Vice*, appoint the Authority's General Counsel or his designee to act as Pre-Hearing Officer to hear preliminary matters prior to the Hearing and to set a procedural schedule to

¹² *Id.*

¹³ *Id.*, pp. 37-38.

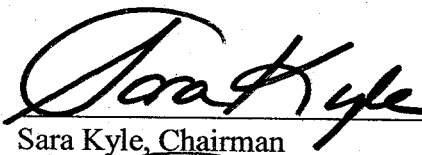
¹⁴ *Id.*, pp. 38-40.

¹⁵ Chattanooga's *Response* was filed at 9:19 a.m. on September 25, 2001.

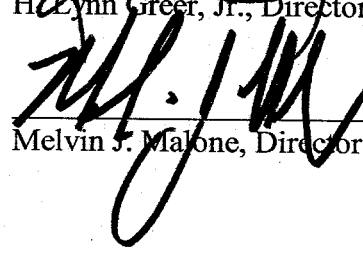
completion, and to suspend Chattanooga's tariff for forty-five (45) days.

IT IS THEREFORE ORDERED THAT:

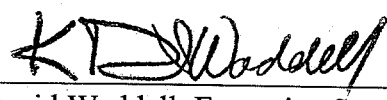
1. A contested case is hereby convened.
2. The Consumer Advocate and Protection Division of the Office of the Attorney General is hereby given leave to intervene and participate in this proceeding as its interests may appear and receive copies of any notices, orders or other documents herein.
3. Dynegy, Inc. is hereby given leave to intervene and participate in this proceeding as its interests may appear and receive copies of any notices, orders or other documents herein.
4. The *Petition for Admission to Plead and Practice Pro Hac Vice* filed by Dynegy, Inc. on behalf of its counsel Robert J. Middleton, Jr. is approved.
5. The General Counsel or his designee is appointed Pre-Hearing Officer in this matter to hear preliminary matters and to set a procedural schedule to completion.
6. The proposed tariff contained in Chattanooga Gas Company's *Petition* is suspended for forty-five (45) days.
7. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary